

**To:** Rao, Kate[Rao.kate@epa.gov]; Albright, David[Albright.David@epa.gov]; Engelman, Alexa[ENGELMAN.ALEXA@EPA.GOV]; Dermer, Michele[Dermer.Michele@epa.gov]; McWhirter, Lisa[McWhirter.Lisa@epa.gov]  
**From:** Moffatt, Brett  
**Sent:** Tue 6/16/2015 8:22:37 PM  
**Subject:** Farmers Cite EPA Audit Of UIC Program In RICO Suit Against State, Oil Firms

Fyi – summarizes the RICO lawsuit

## **Farmers Cite EPA Audit Of UIC Program In RICO Suit Against State, Oil Firms**

**Inside EPA - Posted: June 16, 2015**

An agricultural organization that has sued the California officials and several oil companies for allegedly violating federal racketeering statutes by allowing wastewater injection into underground water supplies in the Central Valley is citing EPA audits and reviews of the state's underground injection control (UIC) program, which have been at the center of controversy as lawmakers have weighed tightening oil and gas drilling regulations.

The case, Committee to Protect Our Agricultural Water v. Occidental Oil and Gas Corp., et al., was filed June 3 in U.S. District Court for the Central District of California. The plaintiff group describes itself as a "citizen organization comprised of farmers, business owners, and individuals concerned about the environment and quality of life in California." It includes businesses and farms "that grow food products, including almonds, cherries, and pistachios."

In addition to Occidental, defendants named in the lawsuit include Gov. Jerry

Brown (D), the Western States Petroleum Association, Chevron U.S.A., Inc., the state Division of Oil, Gas & Geothermal Resources (DOGGR), and current and former DOGGR officials.

The agriculture group alleges that the defendants "formed an 'enterprise' to achieve through illegal means the goal of increasing oil production and maximizing profits and tax revenue by allowing the oil companies to inject salt water into fresh water in violation of the Safe Drinking Water Act (SDWA), according to the complaint for conspiracy under the Racketeer Influenced and Corrupt Organizations Act (RICO) and deprivation of civil rights.

In addition, the "enterprise" engaged in conspiracy to defraud the United States by obtaining federal funds in 2012, 2013, and 2014 under the SDWA; intimidation of witnesses engaged in free exercise of speech or Constitutional right to protect their community from water contamination; mail fraud; and wire fraud, according to the complaint.

Further, the defendants misappropriated federal funds for the protection of water; made "misrepresentations" at a recent California Senate hearing; interfered with local communities trying to protect their water; participated in secret meetings and communications with regulated companies to adopt public policies, violating the California Environmental Quality Act; withheld information under the California Public Records Act; and intimidated and threatened witnesses who discovered contaminated water, the group alleges.

## Program Audit

The complaint cites an audit of the DOGGR UIC program, conducted by EPA in 2011, which concluded that California improperly approved permits for underground injection wells. EPA "noted many problems and ordered DOGGR to adopt regulations to 'clearly require the District Offices to protect [underground

sources of drinking water] to the federally defined standard . . . in the permitting, construction, operation, and abandonment of Class II Injection wells," the complaint states.

But oil companies continued to violate the SDWA, and asked DOGGR for an exception to the rules, the complaint further states. "One exception requested would be for underground injection wells that replaced another injection well or reworked an oil well. Most injection permits fall into this exception. Thus, the proposed exception would violate the [SDWA] and allow for injections with little or no consideration to underground water."

After the previous DOGGR chief refused to grant the industry requests, the "oil companies complained to [Brown] whose administration met with and ordered [the chief] to approve the permits as requested by the oil companies," the complaint claims, but the chief refused to violate the law.

Brown then fired the chief and transitioned the position to a "political appointment, ensuring that he could direct and control the new State Supervisor," the complaint says.

A new "flexible" approach was then pursued by DOGGR to approve permits "without the required documents," the suit charges. "The oil companies went from receiving the typical 50 permits a year to 1,575 permits in 2012 alone."

Sodium chloride levels increased to such a level that the chloride in underground water exceeded the maximum contaminant level allowed under the law, according to the farmer group. Excess chloride and total dissolved solids began damaging orchards, the complaint says.

DOGGR's flexible approach "became notorious on Feb. 6, 2015 when DOGGR admitted it approved 532 permits to oil companies injecting directly into water protected" by the SDWA, the complaint adds.

Over the past several years, Occidental and Chevron have injected an average of 463 million gallons of contaminated water into fresh water each month, the lawsuit also claims.

### Federal Regulations

DOGGR recently asked EPA to allow the oil companies to inject into protected water, as part of a long-term plan to eventually come into compliance with federal UIC regulations.

The suit seeks millions of dollars in alleged lost income and costs for remediation of contaminated water supplies, according to recent media reports. The plaintiffs also seek an injunction mandating the public disclosure of any studies conducted by the state and local officials "who conspired with the oil companies to approve these injections," the complaint says.

In addition, the plaintiffs seek a declaration from the court "revoking any illicitly obtained permits and requiring compliance with the laws designed to protect the water."

Spokesmen with DOGGR and Chevron did not return requests for comment.

During a February press conference call, DOGGR Chief Steve Bohlen said that out of the 532 permits approved to inject waste into federally protected drinking water

wells, about 109 are idle. There are 87 active wells in the so-called 11 aquifers whose exemption from the SDWA has been "confused," Bohlen said during the call earlier this year.

Further, Bohlen claimed that wells disposing Class II fluids, or produced water from oil wells, into aquifers that are under 3,000 micrograms per liter of total dissolved solids "are not pristine," but do contain water of a high quality. "But the water would need to undergo some considerable treatment to be actual drinking water," or water defined as useable for beneficial uses, he said. Some of this water contains high boron and arsenic levels and is not potable, he added.

Brett Moffatt

Office of Regional Counsel (ORC-2)

US EPA, Region 9

75 Hawthorne Street

San Francisco, CA 94105

(415) 972-3946

(415) 947-3570 (fax)